



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING

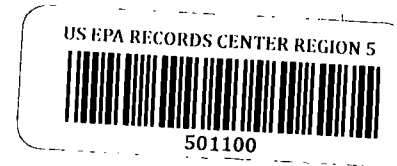


STEVEN E. CHESTER
DIRECTOR

August 11, 2009

VIA E-MAIL and U.S. MAIL

Mr. James Hahnenberg
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard (SR-J6)
Chicago, Illinois 60604-3590



Dear Mr. Hahnenberg:

SUBJECT: North Bronson Industrial Area (NBIA) Draft Groundwater Ordinance

As requested by the NBIA Potentially Responsible Parties Group (PRP), the Michigan Department of Environmental Quality (MDEQ) in consultation with the United States Environmental Protection Agency (USEPA) has reviewed the draft Bronson City ordinance to restrict the use of groundwater. The agencies' review is from the perspective of whether or not the proposed ordinance meets the requirements of Part 201¹ as an exposure control mechanism. These comments are addressed to your attention to share with the PRP.

Impracticality Requirement:

Before a local ordinance can be approved as an exposure control mechanism, the MDEQ must make a finding that it is impractical to accomplish the necessary use restrictions through restrictive covenants. In the case where a large number of properties is affected (e.g. more than 20), the MDEQ does not require the liable party to contact each property owner before seeking the approval of an ordinance. In the case of the NBIA, the MDEQ has decided that this impracticality requirement has been met. The combined groundwater plumes from the various facilities along with impacts from the community sewers and lagoons appear to have impacted more than 20 parcels.

Comprehensive Approach:

The use of an ordinance as an exposure control mechanism under Section 20b(5) of Part 201 must be done in a manner which reflects a comprehensive approach to a facility's exposure issues. Please note that a local ordinance can be approved as an institutional control only in relation to a specific comprehensive plan such as a Remedial Action Plan (RAP) or Interim Response Designed to meet Criteria (IRDC) under Part 201 or a Record of Decision (ROD) under the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended (or CERCLA). This allows us to determine if the

¹ Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

institutional control is responsive to risks in all of the exposure pathways that need control or whether additional exposure controls are also required. While the draft Bronson City ordinance is not designed to address any exposures other than via ingestion of groundwater, it alone will not accomplish this, in this one pathway, due to the fact that contaminated groundwater from the NBIA facilities is present outside of the Bronson City limits.

The NBIA PRPs recognize this issue but have not, to date, identified where the extent of these exposures may occur (both vertically and horizontally) or how they will be addressed. For example the plume(s) likely extends to the north and west of the restricted zone, which is limited by the boundaries of the city, yet how far north or west is not known. Likewise, the draft ordinance (Section 2.B.) allows for the use of water from the lower aquifer without knowledge of whether that zone is threatened or impacted. The MDEQ's approval of this ordinance as an exposure control mechanism at these facilities will remain conditional until the uncertainties in facility characterization have been addressed and a comprehensive response to all of the groundwater pathway exposures are described in detail. Following are more detailed comments on specific parts of the ordinance as well as identification of additional information needs.

Section 3.C.

This section allows for industrial wells in the restricted and buffer zones provided that they draw all of their water from the Lower Aquifer. However, no samples have been collected from the lower aquifer (bedrock aquifer) to demonstrate that the lower aquifer has not been impacted by contamination.

It is not acceptable to simply post signs stating that the water is not acceptable for drinking. Facility plumbing must be physically separate for non-contact cooling water and drinking water.

The MDEQ should not be compelled by the ordinance to become involved in helping the city determine whether or not a well should be approved in the restricted or buffer zones.

Exhibit B:

The proposed restricted area and buffer areas are not acceptable to function as an exposure control mechanism for the NBIA under Part 201 because it does not include parcels of property located within the city of Bronson under which contamination is known to exist. What exposure control mechanism is proposed for areas known to be contaminated but not included in the ordinance? For example, Bronson Plating, and the parcels between the lagoon areas south of County Drain #30 (CD #30) as well as the parcels west of the western lagoons, east of Burr Oak Road and south of CD #30?

As it relates to exposure control mechanisms, what is the purpose of the buffer zone along CD #30 east of Bronson Plating? Is there reason to suspect contamination in this area or immediately west of it?

A map clearly and accurately depicting the city of Bronson boundaries is needed.

Municipal and Irrigation Wells:

What is the status of City Supply Well #3? Has it been abandoned? If it remains operational, a demonstration must be made that this well is completely isolated from threats

of contamination and its use could in no way adversely affect the performance of the ordinance as an exposure control mechanism. Likewise, what aquifer is used for the irrigation well(s) located in this area? A demonstration must be made that use of the irrigation well(s) will not adversely affect the performance of the ordinance as an exposure control mechanism.

Protection for Future Land Use:

Regardless of municipal boundaries, the PRP must establish exposure control mechanisms for current and future land use throughout all areas that are impacted by site contamination. Contamination exists in areas not covered by this ordinance that appear to be located within the limits of the city of Bronson. For example, contamination above generic residential drinking water criteria exists west of the western lagoons. The extent of this contamination has not been fully defined. What mechanisms will be put in place to restrict potential future use of the groundwater in this area?

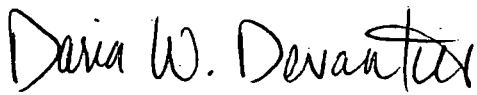
Areas beyond city of Bronson boundaries:

What mechanism to prevent exposure is being implemented for current and future land use for impacted or potentially impacted property beyond the city of Bronson?

Until the issues outlined above are adequately addressed, conditional approval of the draft ordinance as an exposure control mechanism pursuant to Part 201 cannot be given.

The PRP may contact Mr. Stephen Cunningham directly at 231-876-4451 with questions about the use of an ordinance as an exposure control mechanism under Part 201.

Sincerely,

for 
Daria W. Devantex
Deborah Larsen
Project Manager
Specialized Sampling Unit
Superfund Section
Remediation and Redevelopment Division

cc: Mr. Leo Brausch, P.E.
Mr. Stephen Cunningham, MDEQ
Mr. Charles Graff, MDEQ
NBIA File



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*Approach following conditions
Note: Part of the GW plume is not addressed, specifically areas outside the city property west of the NBIA Bronson Industrial Area site*

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institutional control is responsive to risks in all of the exposure pathways that need control or whether additional exposure controls are also required. While the draft Bronson City ordinance is not designed to address any exposures other than via ingestion of groundwater, it alone will not accomplish this, in this one pathway, due to the fact that contaminated groundwater from the NBIA facilities is present outside of the Bronson City limits.

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✓ This section allows for industrial wells in the restricted and buffer zones provided that they draw all of their water from the Lower Aquifer. However, no samples have been collected from the lower aquifer (bedrock aquifer) to demonstrate that the lower aquifer has not been impacted by contamination. *will be addressed after additional investigation's determine extent. not demonstration. Also, removal actions may be required.*

✓ It is not acceptable to simply post signs stating that the water is not acceptable for drinking. Facility plumbing must be physically separate for non-contact cooling water and drinking water. *plumbing is separate*

The MDEQ should not be compelled by the ordinance to become involved in helping the city determine whether or not a well should be approved in the restricted or buffer zones.

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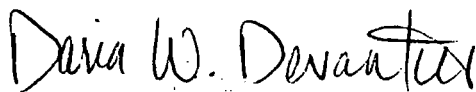
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*Ordinance covers only City -
other areas will be addressed
by other parties.*

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